

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Inez Rowland)	
Claimant)	
VS.)	
)	Docket No. 177,606
Presbyterian Manors of Mid America, Inc.)	
Respondent)	
AND)	
)	
Self Insured)	
Insurance Carrier)	

ORDER

ON the 2nd day of November, 1993, the application of the claimant for review by the Workers Compensation Appeals Board of the Order entered herein by Administration Law Judge George Robertson on October 15, 1993, came regularly on for oral argument before the Appeals Board by telephone conference.

Claimant appeared by her attorney, Timothy J. King, Wichita, Kansas. Respondent and insurance carrier appeared in person by Mary Muncey, Ethel Smith and Pam Dater and by their attorney, Ross A. Hollander, Wichita, Kansas.

This is an appeal by claimant from a Preliminary Hearing Order denying claimant's request for medical treatment. It is alleged that said Order is subject to review by this Board as the finding of the Administrative Law Judge involved disputed issues of whether the accidental injury suffered by the claimant arose out of and in the course of the claimant's employment and whether notice and written claim were timely made. Claimant alleges she has sustained her burden of proof on these issues for purposes of preliminary hearing and is therefore entitled to medical treatment at the expense of the respondent.

Respondent admits the relationship of employer and employee existed on the dates alleged, but denies claimant is entitled to the relief requested because accidental injury on the dates alleged did not arise out of and in the course of employee's employment and that notice and written claim of accidental injury on the dates alleged were not timely given to the employer by the employee.

ISSUES

- (1) Whether claimant met with personal injury by accident arising out of and in the course of her employment with the respondent beginning January 16, 1991, with subsequent aggravations each and every working day thereafter.
- (2) Whether notice and claim were timely made.

RECORD

The record in this case consists of the documents on file with the Division of Workers Compensation including the October 12, 1993, transcript of preliminary hearing proceedings and claimant's Exhibits numbered 1 through 4 attached thereto. It is noted that respondent's Exhibit A was marked at said hearing

but was not admitted nor is it a part of the record herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Board finds as follows:

- (1) That claimant met with personal injury by accident arising out of and in the course of her employment on January 16, 1991.
- (2) That timely notice of accident was given by the claimant to the respondent.
- (3) That written claim was received by the respondent on May 25, 1993.
- (4) That claimant received authorized medical treatment on January 16, 1991, at the Axtell Clinic and that the authorized treating physician there was Richard Glover, M.D.
- (5) That claimant saw Dr. Glover for this injury on the date of accident, was treated and released to return to work without restrictions and without additional medical treatment being scheduled or recommended. It does not appear from the record that this was an ongoing relationship nor that the respondent authorized continued treatment. Odell v. U.S.D., 206 Kan. 752, 481 P. 2d 974 (1971)
- (6) That claimant did receive further medical treatment after January of 1991 from her personal physicians, but that this treatment was neither authorized nor paid for by the respondent.
- (7) That there is no evidence that claimant again sought authorized medical treatment until February, 1992.
- (8) That claimant did not deliver timely written claim upon the respondent within 200 days after the date of accident or suspension of medical benefits. (K.S.A. 44-520a)
- (9) That claimant, subsequent to the expiration of the 200 days to file written claim, again obtained medical treatment at the expense of the respondent including on April 15, 1993, but this did not extend the time within which to file written claim. Riedell v. Gage Plumbing & Heating Co., 202 Kan. 538, 449 P. 2d 521 (1969); Rutledge v. Sandlin, 181 Kan. 369, 310 P. 2d 950 (1957)
- (10) That the medical evidence, testimony and record taken as a whole does not establish a series of accidents or traumas, but rather point to a single accidental injury occurring on January 16, 1991.

WHEREFORE, it is the finding of this Board that the October 15, 1993, Order of Administrative Law Judge George R. Robertson should be and is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November, 1993.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Timothy J. King, 300 West Douglas, Suite 430, Wichita, Kansas 67202
Ross A. Hollander, 500 North Market, Wichita, Kansas 67214
George R. Robertson, Administrative Law Judge